IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3937 OF 2005

1. Baliram Ganpat Bangarkar.
2. Janardhan Gopinath Durge. ... Applicants.

Versus.

The State of Maharashtra. ... Respondent.

Shri S.V.Kotwal for the Applicants.

Shri A.S.Gadkari, A.P.P.for the Respondent.

AND

CRIMINAL APPLICATION NO.3862 OF 2005

1. Dharma Gajanan Dangarkar
2. Suresh Dinkar Dangarkar.
3. Sanjay Ramchandra Dangarkar. ... Applicants.

Versus.

The State of Maharashtra. .. Respondent

Shri I.R.Kulkarni for the Applicants.

Shri U.V.Nikam, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 19th July, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicants and the learned A.P.P. in both the Applications.

2. The Applicants in both the Applications have been arrested in C.R.No.105 of 2004 registered at Panval Taluka Police Station under sections 302, 307, 326. 147, 148, 324, 323, 452, 427 read with section 149 of the Indian Penal Code and under sections 3 and 5 of the Explosive Substances Act. In so far as the Applicant

No.2 in Criminal Application No.3937 of 2005 is concerned, the case made out in the Application is that he was not present on the spot at the time of incident as he was on duty at the factory of M/s.Sejal Fabricators at village Harigram, Post Mobre, Taluka Panwel, Dist. Raigad. On this ground and also on merits, the Applicant No.2 is claiming bail.

3. The Applicant No.1 is also claiming bail on merits. The learned Advocate appearing for the Applicants in Criminal Application No.3937 of 2005 submitted that the Applicant No.1 has not played any serious role in the incident. He submitted that since large number of Accused persons have been implicated in the case, it was impossible for the witnesses to describe the role played by each and every accused in detail. He submitted that the incident has obviously taken place as a result of rivalry between the two groups. He submitted that the investigation is complete and the charge sheet has been filed and the Applicants are entitled to be enlarged on bail. The learned Advocate for the Applicant in Criminal Application No.3862 of 2005 submitted that the Applicants have not played any role in so far as the assault on the deceased person is concerned. He pointed out that the Applicant Nos.1 and 2 were allegedly possessing iron rods and Applicant No.3 was possessing only a wooden stick. He submitted the persons who are injured as a result of the alleged assault by the

Applicants have not suffered any serious injuries and therefore, the Applicants are entitled to be enlarged on bail.

4. The learned A.P.P. submitted that there is enough material on record to show complicity of the Applicant. He submitted that this Court has already rejected the bail application filed by co-accused Machindra Mahadu Thakur. He submitted that considering the role played by the Applicants, they are not entitled to be enlarged on bail.

5. I have considered the submissions. The role alleged against the Applicant No.1 in Criminal Application No.3937 of 2005 is assault by using a sword on the deceased Bhagwan Kathawale. There is recovery of sword at the instance of Applicant No.1. The report of the chemical analyser as regards the alleged blood stains on the sword is awaited. Atleast three witnesses have described the role played by the Applicant No.1 of assaulting the deceased Bhagwan by a sword. There is enough material on record to show the complicity of the Applicant No.1 in causing death of Bhagwan.

6. In so far as the Applicant No.2 in Criminal Application No.3937 of 2005 is concerned, the allegation against him is as regards the assault on one Maruti Sadu Warde by using an iron rod. The injury certificate of

said Maruti discloses that he has suffered one fracture which according to the certificate could have been caused by use of hard and blunt object and one contusion. There are two incised wounds on the person of Maruti which are allegedly caused by a sharp weapon.

7. The learned Advocate for the Applicant has relied upon letter dated 27th August 2004 written by the wife of the Applicant No.2 to various superior Police Officers pointing out that on the date of the incident, the said Applicant was working with M/s.Sejal Fabricators. However, there is a controversy about the genuineness of the certificate issued by M/s.Sejal Fabricators. Some material is placed on record in the form of statement of the Proprietor of M/s.Sejal Febricators and the statement of wife of the Applicant. The wife of the Applicant No.2 has allegedly stated that in order to save her husband she got a certificate typed on the printed bill of M/s.Sejal Fabricators and obtained signature of the Proprietor. It is alleged that the wife has stated that in fact on the relevant date her husband was not working with M/s.Sejal Fabricators. The Applicant No.2 was arrested in July 2004. The allegation against the Applicant No.2 does not relate to the use of sword and it is alleged that he caused injury to one Maruti Warde with an iron rod. He has played no role on the assault on deceased. The application made by the co-accused Machindra has been

rejected by this Court as it was alleged by more than one witness that the said co-accused had used a sword as weapon of assault. Considering the nature of injuries suffered by Maruti and considering the fact that the Applicant is in custody for last about one year, the Applicant No.2 deserves to be enlarged on bail subject to stringent conditions which I propose to impose.

8. In so far as the Applicants in Criminal Application No.3862 of 2005 are concerned, the role alleged against the Applicant No.1 Dharma Gajanan Dangarkar is as regards assault on one Tulsiram Rama Borade by using an iron rod. The injury certificate of said Tulsiram shows that only one grivious injury of fracture of 5th metacarpal bone of left hand and the other three injuries are contusions which are of simple nature. There is no allegation against the said Applicant as regards use of sword. There is no allegation that he assaulted the deceased persons. Therefore, the Applicant No.1 Dharma Gajanan Dangarkar is also entitled to be enlarged on bail.

9. So far as the Applicant No.2 Suresh is concerned, the allegation is that as regards the assault on Shankar Parshuram Warde. It is necessary to refer to the injury certificate showing injuries on the person of said Shankar. The said Shankar has suffered two fractures. One is fracture of frontal bone on the left side and the

other fracture is of Tibia fibula. The medical certificate discloses that the said two injuries are grivious injuries and in so far as the fracture of frontal bone is concerned, the injured required treatment of a Neurologist. In my view so far as Applicant No.2 is concerned, at least one injury caused by him is of serious nature which has caused fracture of frontal bone requiring treatment by a Neurologist. Considering the description of the role played by the Applicant No.2 given by the witnesses no case is made out for grant of bail in favour of the Applicant No.2.

10. That takes me to the case of Applicant No.3. The allegation against the Applicant No.3 Sanjay Ramchandra Dangarkar is of assault by using a wooden stick on Santosh Gajanan Warde, and Harishchandra Patil. Injury certificate of Santosh shows that he has suffered only one C.L.W. and injury on the person of Harishchandra is also of very simple nature. There is no allegation against Sanjay save and except the allegation of assault on the said two persons by stick. The Applicant No.3 is also in custody from July 2004 and therefore, he deserves to be enlarged on bail.

10. Hence the following order is passed:

(i) Application of Applicant No.1 Baliram Ganpat

Dangarkar in Criminal Application No.3937 of 2005 is rejected.

(ii) Application of the Applicant No.2 Suresh Dinkar Dangarkar in Criminal Application No.3862 of 2005 is rejected.

(iii) Applications of the Applicant No.2 in Criminal Application No.3927 of 2005 and the Applicant Nos.1 and 3 in Criminal Application No.3862 of 2005 are allowed. They shall be released on bail in connection with C.R.No.105 of 2004 registered with Panvel Taluka Police Station, Panvel, subject to furnishing a personal bond of Rs.10,000/- each with one or two local sureties in the like amount.

(iv) The Bail is granted subject to condtion that the said Applicants will attend the Panvel Taluka Police Station once in a fort-night till completion of trial.

(v) The Bail is granted subject to condition that the said Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution

evidence.

(vi) The Applicants shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

(vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(viii) Applications are disposed of in above terms.

(ix) The parties to act upon an authenticated copy of this order.

Judge.